

T-721

## Problems with the Investment Authority for Three South Dakota Trust Funds

### Background on Creation of the Trust Funds

- Senator Daschle of South Dakota, (the Senate Minority Leader) was instrumental in getting legislation enacted that provides financial assistance to implement the wildlife habitat restoration plans of two Indian tribes in his state, the Cheyenne River Sioux and the Lower Brule Sioux Tribes, and well as the State of South Dakota.
- The authorizing legislation created three trust funds in the Treasury, one for each of the two tribes, and another for the State of South Dakota. Each year until fiscal year 2010, \$5 million has been and will be transferred from the general fund to the two Indian funds, to be split 74 percent for the Cheyenne River Sioux and 26 percent for the Lower Brule Sioux trust funds. Each year until fiscal year 2009, \$10 million has been and will be transferred from the general fund to the South Dakota fund.
- When the trust funds are fully capitalized in FY 2009 and 2010, and if wildlife habitat restoration plans have been prepared by the two Tribes and the State of South Dakota, then the interest earnings may be disbursed from the funds to finance the implementation of the plans. Amounts transferred from the general fund to the trust funds may never be disbursed.

### Problems with Investment Language

- The authorizing legislation requires 1) the Secretary of the Treasury to invest amounts in each fund in interest-bearing obligations of the United States or in obligations guaranteed by the United States as to both principal and interest and 2) that such investments be in obligations that carry the highest rate of interest among available obligations of the required maturity.
- The first requirement appears in numerous statutes, and for decades Treasury generally has, as a matter of longstanding investment policy, used its discretion to invest the assets of trust and other investment funds solely in Treasury securities.
- The second requirement, however, is unique, and presents Treasury with several problems which make the implementation of the investment authority unworkable, including:
  - The highest coupon rate, rather than market yield, must be used to select an investment.
  - Treasury may be required to invest in guaranteed obligations, although it is unclear exactly which obligations would fall in this category.
  - Securities issued by Government-sponsored enterprises may be eligible investments, because the statutes which create such entities usually provide that their obligations are suitable investments for all public monies.
  - Because Treasury bills are issued at a discount, and are thus not "interest-bearing", they would not be eligible investments.

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"Tribal Problems with 3 Sioux"

- Inflation-indexed Treasury securities, which have a relatively low coupon rate, would not be likely to have the highest coupon rate of available obligations.
- To the extent that the law requires investment in other than Treasury securities, it is inconsistent with Treasury investment policy. Moreover, such investments may have prepayment or other kinds of risk, and would be scored as budget outlays.
- Dave Lebryk from Fiscal met Senator Daschle's staff and spoke with the tribes, who were informed that the funds would be invested in Treasury overnight securities until decisions on investments were made.
- We will proceed along two parallel tracks:
  - 1) Talk with Senator Daschle's staff, the two Indian Tribes and others to seek legislation next year which would delete the second requirement, and
  - 2) Seek clarification from Treasury's General Counsel of what are eligible investments under current law.
- If we were unable to amend the law, we should consider contracting with a financial advisor to conduct investments in non-Treasury securities.

ON TOP OF ALL THIS (SPECIAL RELATIONSHIP W/  
THE INDIANS RESERVES. Budget)

## POSSIBLE PERMITTED INVESTMENTS

CATEGORY "A"	CATEGORY "B"	CATEGORY "C"
"interest-bearing obligations of the United States"	"obligations guaranteed as to both principal and interest by the United States"	obligations issued by any entity whose statute provides that its obligations "shall be lawful investments for all fiduciary, trust and public funds, the deposit of which shall be under the authority or control of any officer or agency of the Government of the United States"

CATEGORY "B1"	CATEGORY "B2"
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<p>direct Treasury obligations (non-marketable specials)</p> <p><b>permitted investments</b></p>	<p>gov't-guaranteed fed. agency "borrowings":</p> <p>Commodity Credit Corp, Fed Farm Mortgage Corp, Fed Housing Admin, Fed Pub Housing Auth, Home Owners' Loan Corp, Reconstruction Finance Corp, TVA (pre-19XX), U.S. Maritime Comm.</p> <p><b>permitted investments</b></p> <p><b>very few, if any, left</b></p>	<p>gov't-guaranteed private-lender "loans":</p> <p>Ed-guaranteed student loans, Ag-guaranteed loans, SBA-guaranteed loans</p> <p>(issue: amortizing vs. "required maturity")</p> <p>Ginnie Maes</p> <p><b>need legal certainty as to permissibility: go to OLC?</b></p>	<p>USPS debt obligations (none in mkt)</p> <p>TVA debt obligations</p> <p>Ginnie Maes</p> <p>most GSE securities</p> <p>District of Columbia bonds?</p> <p><b>permitted investments</b></p> <p><b>need to compile up-to-date list</b></p>
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